

Appl. No. 10/826,377
In re Takegawa
Reply to Office Action of July 11, 2007

REMARKS/ARGUMENTS

The Examiner is thanked for the Official Action dated July 11, 2007. This amendment and request for reconsideration is intended to be fully responsive thereto.

Specification has been amended to specify that the spike member 30 is formed with a detent therein in the form of an annular groove 33, as recited in claim 1. No new matter has been added. Claim 13 has been correspondingly amended. No new matter has been added.

Specification has been further amended to specify that the leg portion 43 of the L-shaped locking plate 40 outwardly extends from the latching portion 42 substantially perpendicularly thereto. No new matter has been added. Support for this amendment could be found in Fig. 9 of the present application.

The Specification has been also amended to specify that a latching portion 42 has a latching aperture 42a, 42b. No new matter has been added. Support for this amendment could be found in Figs. 10 and 12 of the present application.

In addition, specification has been amended to correct minor informalities. No new matter has been added.

Claims 1, 3, 5-8 and 14-16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hoshino (US 6,031,170) in view of Pagliuso (US 2,480,382) in further view of Angst et al. (US 4,974,457). The applicant respectfully disagrees. However, in order to expedite the prosecution of the present application, claims 1 and 15 have been amended to specify that the latching portion of the locking plate engages a detent formed in the spike member so as to retain the spike member in the projecting position with respect to the main body. The antecedent basis for the above amendments could be found in Fig. 11 and page 5, lines 18-20 of the present application. No new matter has been added.

Regarding claims 1 and 15: The examiner alleges that the combination of Hoshino and Pagliuso discloses substantially the claimed invention except for the internal locking assembly comprising a resiliently biased locking plate having a latching portion that engages a detent formed in the spike member, and further cites Angst that allegedly teaches (in Fig. 5) "a similar structure having an internal locking assembly comprising a locking plate (159) having a latching portion (159b) that engages a detent (157d) formed in a member (157), the locking plate being L-shaped. This structure prevents the member from being removed or inserted inadvertently." The examiner further alleges that it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the structure of Hoshino and Pagliuso by including and internal locking assembly comprising a locking plate having a latching portion that engages a detent formed in a member, as taught in Angst in order to prevent the spike member from being

removed or inserted inadvertently.

First, contrary to the examiner's allegations, Angst fails to disclose the spike member resiliently biased to translate in an aperture of a main body. In fact, as clearly shown in Fig. of Angst, the spike 157 is disposed in a blind hole 145f and is not resiliently biased to translate in the blind hole 145f in the shaft 145 as the spike 157 is fastened on the shaft 145 by means of a screw 161 arranged in a radial, threaded bore 145g of the shaft 145 (see col. 13, lines 54-57 of Angst). Clearly, one with ordinary skill in the art would not interpret the spike 157 fastened with the screw 161 as resiliently biased to translate in the blind hole 145f of the shaft 145.

Second, Angst fails to disclose the resiliently biased locking plate having a latching portion that engages a detent formed in said spike member so as to retain the spike member in a projecting position with respect to the main body. The term "detent" is defined as a device (as a catch, dog, or spring-operated ball) for positioning and holding one mechanical part in relation to another in a manner such that the device can be released by force applied to one of the parts. By contrast, the spring means 159 of Angst is arranged on the spike 157 and has an elongated portion 159a running along the groove 157c and an end portion 159b protruding into the transverse hole 157d (see col. 13, lines 50-54). Moreover, the spike 157 and the spring means 159 are fastened on the shaft 145 by the screw 161 (see col. 13, lines 54-57). Thus, the end portion 159b of the spring means 159 cannot be interpreted as "latching portion" and the transverse hole 157d cannot be interpreted as "detent" as the spike 157 is retained in the position relative to the shaft 145 by the screw 161, not by the spring means 159. As clearly

disclosed by Angst, the spring means 159 is provided to hold the tubular portion 179a of the sleeve 179 while the spike 157 does not yet completely penetrate the tubular portion 179a of the sleeve 179 (see col. 16, lines 24-29), not to retain the spike 157 in the projecting position with respect to the shaft 145.

Third, the examiner erroneously alleges that Angst teaches (in Fig. 5) an internal locking assembly comprising a locking plate (159) having a latching portion (159b) that engages a detent (157d) formed in a member (157), i.e., the spike 157 is shown in Fig. 5 in projecting position, that implies that the spike 157 could be moved to a retracted position. Clearly, as the spike 157 is disposed in a blind hole 145f, it cannot be moved any further inside the shaft 145 to the retracted position. Thus, Angst fails to disclose the locking assembly provided for locking the spike member in a projecting position.

Fourth, Angst fails to disclose a resiliently biased locking plate having a latching portion that engages a detent formed in the spike member. Contrary to the examiner's allegations, the element 159 of Angst, interpreted by the examiner as the resiliently biased locking plate, is spring means (see column 13, line 50). Clearly, one with ordinary skill in the art would not interpret the spring means 159 as resiliently biased locking plate. Moreover, those skilled in the art would readily realize that the plate is an element having opposite flat surfaces. Contrary to the examiner's allegations, Angst describes the spring means 159 as an analogous to the spring means 10 on the spike 11. In turn, the spring means 10 is described as consisting of a piece of wire (see col. 10, lines 14-17). Evidently, the "piece of wire" cannot

be interpreted as "plate".

Fifth, MPEP § 2143.01 requires that there must be some suggestion or motivation or apparent reason, either in the prior art references or in the knowledge generally available to one of ordinary skill in the art, to modify or combine teachings of the prior art. The spike of Angst is provided to penetrate into a container of a fluid sample, while the locking device of Pagliuso prevents the spike from retracting back into the tripod leg, as the spike of Pagliuso is not removable from the tripod leg, but rather movable between extended and retracted positions. Thus, the modification of the structure of Hoshino and Pagliuso by including the locking device of Angst suggested by the examiner not only lacks any suggestion, motivation or logical reason. Thus, the rejection of claim 1 under 35 U.S.C. 103(a) is improper.

Sixth, Examiner's modification of Hoshino in view of Pagliuso and further in view of Angst is improper because in order to rely on a reference as a basis for rejection of an applicant's invention, the reference must be in the field of applicant's endeavor or be reasonably pertinent. In other words, to rely on the reference under 35 U.S.C. 103, it must be analogous prior art. The invention of Angst pertains to an apparatus and a method for providing a passage in a sealing member of a container of a fluid sample and discloses the spike provided to penetrate into the container of the fluid sample. Clearly, the apparatus and method for providing a passage in a sealing member of a container of a fluid sample of Angst (class 73: MEASURING AND TESTING) and the tip structure for a support leg of a musical instrument stand (class 84: MUSIC) have very different purpose and structure. Therefore, the claimed

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invention and the apparatus and method for providing a passage in a sealing member of the fluid sample container of Angst are not part of the same endeavor, i.e. Angst is non-analogous prior art. Hence, the combination and modification of Hoshino, Pagliuso and Angst suggested by the Examiner cannot be made, and, thus, the rejection of claims 1 and 15 under 35 U.S.C. 103(a) is improper.

Therefore, claims 1, 3, 5-8 and 14-16 define the present invention over the prior art.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoshino in view of Pagliuso and Angst, as applied to claims 1, 3, 6-8 and 14-16, in further view of Kawakami (U.S. 6,883,530). Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoshino in view of Pagliuso and in further view of Kawakami. The applicant respectfully disagrees.

Regarding claims 9 and 21: The examiner alleges that the combination of Hoshino and Pagliuso and Angst discloses substantially the invention recited in claim 9, while the combination of Hoshino and Pagliuso discloses substantially the invention recited in claim 21 except for at least one pivot limiting member for limiting a range of pivotal motion between the main body and the support leg, and cites Kawakami that allegedly “teaches (in Figs. 2-4) a similar structure having at least one pivot limiting member (25, 27) for limiting a range of pivotal motion between a main body (22) and a support leg (1)” to provide “a reduced degree of

mechanical stiffness being able to rotate and pivot in use.” The examiner concludes that it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the structure of Hoshino, Pagliuso and Angst by including at least one pivot limiting member for limiting a range of pivotal motion between the main body and the support leg as taught in Kawakami in order to provide a reduced degree of mechanical stiffness being able to rotate and pivot in use.

The tip structure of support legs of musical instrument stand of the present invention is provided for stabilizing the stand for the musical instrument and without causing shifting of the stand (see page 2, lines 18-20 of the present application). On the contrary, the objective of a walking aid of Kawakami is to allow a lower housing 21 adapting to different angles to stay closely to the ground in order to prevent slipping (see col. 1, lines 40-42). In other words, the whole purpose of the joint mechanism of Kawakami is to continuously flex the lower housing 21 of the walking stick 1 relative to the walking stick rest 2, while the support legs of the musical instrument stand have to sturdily and rigidly (i.e. with high degree of mechanical stiffness) support the musical instrument. Moreover, Kawakami did not disclose or show any pivot limiting member that would limit a range of pivotal motion between the pliable plastic tray (22) and a walking stick (1). In fact, the element 1 of Kawakami is the walking stick 1, while the element 22 is a pliable plastic tray 22 having a nonslip surface 22a engaging the ground. Clearly, those skilled in the art would not interpret the upper portion of the walking stick 1 as “support leg” and the lower, ground engaging portion 22 of the walking stick 1 as

“main body”.

Thus, the modification of the structure of Hoshino and Pagliuso (and Angst) by including the joint mechanism of Kawakami suggested by the examiner not only lacks any suggestion, motivation or logical reason, but teaches away from the claimed invention (MPEP 2144.05.III). Accordingly, the rejection of claims 9 and 21 under 35 U.S.C. 103(a) is improper.

Further regarding claims 11 and 12: claim 11 has been amended to specify that the latching portion of the locking plate is formed with a latching aperture. No new matter has been added. Support for this amendment could be found in Figs. 10 and 12 of the present application.

In addition to the above arguments regarding the patentability of claim 1, the prior art fails to disclose the locking plate formed with a latching aperture through which the spike member is adapted to pass. Thus, the rejection of claims 11 and 12 under 35 U.S.C. 103(a) is improper.


Further regarding claim 13: in addition to the above arguments regarding the patentability of claim 12 and contrary to the Examiner's allegations, the prior art fails to disclose the spike member comprises an annular groove engaging the second diameter in the projecting position. Thus, the rejection of claim 13 under 35 U.S.C. 103(a) is improper.

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New claim 22 has been added.

It is respectfully submitted that claims 1, 3, 5-16, 21 and 22 define the invention over the prior art of record and are in condition for allowance, and notice to that effect is earnestly solicited. Should the Examiner believe further discussion regarding the above claim language would expedite prosecution they are invited to contact the undersigned at the number listed below.

Respectfully submitted:
Berenato, White & Stavish

By: 
George Ayvazov
Reg. N° 37,483

6550 Rock Spring Drive
Suite 240
Bethesda, Maryland 20817
Tel. (301) 896-0600
Fax (301) 896-0607